

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

**IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION**

**Case No. 1:13-md-02419-RWZ**

**This document relates to all cases.**

**RESPONSE AND OPPOSITION BY ROANOKE-AREA  
LICHTENSTEINFISHWICK AND BROWN & JENNINGS INTERVENORS  
TO THE “EMERGENCY” MOTION BY INSIGHT HEALTH CORPORATION [ECF  
NO. 1149]**

The below-named Roanoke-Area LichtensteinFishwick and Brown & Jennings Intervenors (“Intervenors”)<sup>1</sup>, by counsel, appear specially to note their opposition to the “emergency motion” (ECF No. 1149) filed by Insight Health Corporation (“Movant”), asking that this Court enjoin the “Roanoke Gentry Locke Plaintiffs” from “taking any action” (see ECF No. 1149 at 1) with respect to suits filed by those plaintiffs in the Circuit Court for the City of Roanoke (“State Court”). The subject suits remain pending in the State Court and have not been removed to or otherwise transferred to this Court. While the emergency motion does not seek to enjoin these Intervenors, it does appear to ask the Court to enjoin counsel for the Roanoke Gentry Locke Plaintiffs from taking any action with respect to cases that were filed in the State Court by these Intervenors. *See id.* at 1.

These Intervenors have argued in multiple earlier submissions that this Court does not have “related to” jurisdiction and that the exercise of such jurisdiction is contrary to established

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<sup>1</sup> Previously, *see* ECF Nos. 129, 159, 792 and 1056, these Intervenors have appeared specially for the limited purpose of opposing the Trustee’s Renewed Transfer Motion (ECF No. 732), consistent with ¶1(a) of MDL Order No. 5 (ECF No. 87). Like those earlier submissions, this submission is without waiver of these Intervenors’ rights and without consent to the jurisdiction of this Court, generally or specifically, over the suits that these Intervenors filed in the State Court on March 13, 2014. Those suits were subsequently removed to the U.S. District Court for the Western District of Virginia, and are the subject of motions to remand pending in that court.

principles of federalism. Federalism boundaries will be crossed even further if this Court grants the injunctive relief sought by Movant.

These Intervenors write in support of the Gentry Locke Plaintiffs and ask the Court to deny the emergency motion. As discussed by the Gentry Locke Plaintiffs, use of the “necessary in aid of” jurisdiction exception to the Anti-Injunction Act to enjoin state courts is extremely disfavored and the reach of this exception is construed narrowly. Movant’s discussion of the applicable law largely leaves “necessary” out of its analysis; however, that critical term cannot be read out of the statute. As discussed by the Gentry Locke Plaintiffs, and effectively echoed today by the Plaintiffs’ Steering Committee, *see* ECF No. 1162, the relief sought by Movant is not “necessary” to aid the jurisdiction this Court has said it will exercise (but which arguably the Court has not yet exercised).

For the reasons set forth above, these Intervenors ask that the Court deny Movant’s emergency motion.

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Respectfully submitted,

**ROANOKE-AREA LICHTENSTEINFISHWICK  
INTERVENORS:**

**Gladys G. Austin  
Richard Blankenship  
Cheryl Brogan  
Kimberly Chitwood  
Christopher Compton  
Shirley Doyle  
Renate Fariss  
Nancy Goodfellow  
Norma Hurley  
Mabel Hutcherson  
Arnold Moon  
Rosanne Moon  
Sharon Overstreet  
Mary Radford  
Audrey Ransome  
Nosworthy Reid**

**Larry Hall  
Frank Haranzo, Jr.  
Susanne Hastings  
Jacob Helm  
Stuart Katz  
Melissa Marshall  
John Marsinko  
Jane McKeon  
William L. Neal, Administrator  
Angela Norman  
Larry Rice  
Deanna Smith  
Stevie Thomas  
Brenda Varley  
Christine Wheeler**

By: /s/ Gregory L. Lyons  
Of Counsel

John E. Lichtenstein (VSB #27048)

E-mail: [jel@vatrials.com](mailto:jel@vatrials.com)

John P. Fishwick, Jr. (VSB #23285)

E-mail: [jpf@vatrials.com](mailto:jpf@vatrials.com)

Gregory L. Lyons (VSB #24037)

E-mail: [gll@vatrials.com](mailto:gll@vatrials.com)

Monica L. Mroz (VSB #65766)

E-mail: [Monica@vatrials.com](mailto:Monica@vatrials.com)

Joanna M. Meyer (VSB #86427)

E-mail: [jmm@vatrials.com](mailto:jmm@vatrials.com)

LICHTENSTEINFISHWICK PLC

101 South Jefferson St., Suite 400

Roanoke, VA 24011

Ph: (540) 343-9711

Fax: (540) 343-9713

*Counsel for Roanoke-Area LichtensteinFishwick Intervenors*

**BROWN & JENNINGS INTERVENORS:**

**Nora Bell**  
**Alma Eden**  
**Thomas Goodwin**  
**Jimmy Green**  
**Patricia Jennings**  
**Susan Kincanon**  
**Ashlee Lakin**  
**Virginia Milne**  
**Lori Morris**  
**Deborah Rogers**  
**David Rose**  
**Joseph Smith**  
**Vicki Uthus**  
**Regina Waddell**  
**Doris West**  
**Judith Williams**

By: /s/ Gregory L. Lyons for P. Brent Brown  
Of Counsel

P. Brent Brown (VSB # 18760)  
E-mail: [brent@brownjenningslaw.com](mailto:brent@brownjenningslaw.com)  
William A. Jennings (VSB # 24176)  
E-mail: [andy@brownjenningslaw.com](mailto:andy@brownjenningslaw.com)  
BROWN & JENNINGS, PLC  
30 Franklin Road, Suite 700  
Roanoke, Virginia 24011  
Telephone: (540) 444-4010  
Fax: (540) 444-4011

*Counsel for Brown & Jennings Intervenors*

**CERTIFICATE OF SERVICE**

I, Gregory L. Lyons, hereby certify that I filed this document through the CM/ECF system, thereby providing electronic notice of such filing to the registered participants as identified in the Notice of Electronic Filing (NEF) and that paper copies will be provided to those indicated in the NEF as non-registered participants.

/s/ Gregory L. Lyons  
Counsel for Roanoke-Area  
LichtensteinFishwick Intervenors  
Dated: June 2, 2014